

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

MARCOS DELACRUZ,

Defendant.

USDS SDNY
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16-cr-262-3 (JGK)

MEMORANDUM OPINION AND
ORDER

JOHN G. KOELTL, District Judge:

The Court received the attached two letters from the defendant on August 27, 2019 and September 16, 2019. The defendant moves the Court to designate his federal sentence as concurrent to his state sentence, or in the alternative, for instructions on how to make his state and federal sentences run concurrently.

At the defendant's sentencing on December 1, 2016, the Court specifically did not rule on whether the federal sentence should be concurrent with any subsequently imposed state sentence. The Court declined to make any recommendation to the state judge, who would be able to determine an appropriate total term of imprisonment. The state judge subsequently sentenced the defendant to 30 months' imprisonment, to run concurrently with the federal sentence. However, the Government advises that the defendant had been writted into federal custody from state custody, and then returned to state custody to serve his state sentence. After the defendant concluded serving his state

sentence, he was returned to federal custody to begin serving his federal sentence. The net effect of this process is that the state court sentence, which the state court judge determined should be concurrent with the federal sentence, was not in fact concurrent. This was contrary to this Court's view at sentencing, which was that the state court judge should have the option of making the state court sentence concurrent with the federal sentence because the state court judge would have the most complete information to determine the total term of imprisonment that the defendant should serve.

Under 18 U.S.C. § 3621(b), the BOP has the ability to designate nunc pro tunc a state facility in which a prisoner is serving his state sentence as a place of federal confinement. See McCarthy v. Doe, 146 F.3d 118, 122-23 (2d Cir. 1998). Such designation would make the prisoner's sentence run concurrently. Id.

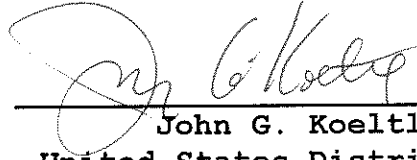
In its June 24, 2019 letter, the Government advised the Court that upon consultation with the Bureau of Prisons ("BOP"), should the Court seek to give effect to the state court's concurrent sentence, the Court should amend the defendant's judgment. The Court hereby recommends to the BOP that the defendant's federal sentence of 33 months' imprisonment be retroactively designated as concurrent with the defendant's

state sentence. See United States v. Alvarez, No. 09-CR-386 DAB,
2015 WL 1851658, at *4 (S.D.N.Y. Apr. 17, 2015).

The Government is requested to convey this recommendation
to the BOP.

SO ORDERED.

Dated: New York, New York
September 30, 2019



John G. Koeltl
United States District Judge